

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THYSSENKRUPP MATERIALS NA, INC.,	§	CIVIL ACTION NO. 4:19-cv-3128
D/B/A THYSSENKRUPP MATERIALS	§	
TRADING NORTH AMERICA	§	
Plaintiff	§	
V.	§	
	§	
	§	
M/V ELEEN NEPTUNE, her engines, boilers,	§	
tackle, etc., <i>in rem</i> , and OCM ATLANTIC	§	
TRADER, LLC, <i>in personam</i>	§	
Defendants	§	IN ADMIRALTY

ORIGINAL COMPLAINT

Plaintiff, THYSSENKRUPP MATERIALS NA INC., D/B/A THYSSENKRUPP MATERIALS TRADING NORTH AMERICA (Thyssenkrupp or Plaintiff), alleges for its complaint against the M/V ELEEN NEPTUNE, *in rem*, and OCM ATLANTIC TRADER, LLC (OCMI), *in personam*, the following causes of action which respectfully will be proven by a preponderance of credible evidence.

1. This claim is an admiralty and maritime claim within the meaning of 28 U.S.C. §11333 and Rule 9(h) of the Federal Rules of Civil Procedure, or is brought pursuant to 9 U.S.C.A. §8, for preservation of *in rem* security for arbitration.

2. Plaintiff is the owner or duly authorized representative of the owners or underwriters or subrogated underwriters of cargo shipped on board the captioned vessel which is more particularly described in the attached Schedule A. Plaintiff's principal office and place of business is stated in Schedule A.

3. At all times material and on information and belief, the M/V ELEEN NEPTUNE was an oceangoing vessel bearing International Maritime Organization (IMO) No. 9430844, weighing

approximately 55,657 gross tons, and engaged in the carriage of cargo to and/or from ports in the United States, including, without limitation, the Port of Houston, Texas.

4. Defendant OCM had and now has the legal status and offices and places of business stated in Schedule A. They were engaged in business as common carriers of merchandise by water for hire, and were the vessel owners, operators, charterers, managers and controlled the captioned vessel which now is, or will be, within the jurisdiction of this Court or another U.S. court of competent jurisdiction, during the pendency of the action.

5. The cargo described in Schedule A was sold, shipped, inspected, carried, kept, discharged and delivered from the captioned vessel not in the same good order and condition as when received, rather, it was delivered by defendants in non-conforming and contaminated condition, due to the fault, neglect, deviation, unseaworthiness, maritime tort, breach of warranty, and actions/inactions of defendants, their agents and servants

6. Plaintiff sues on its own behalf and as agent and trustee on behalf of any other party who may now have or hereinafter acquire an interest in this action

7. Plaintiff has duly performed all duties and obligation on its part to be performed.

8. Plaintiff's damages are in excess of **\$1,750,000.00** for which demand has been made but not paid. Plaintiff demands recovery from defendants, jointly and severally.

Wherefore, Plaintiff demands that summons issue against defendants in proper form; that judgment be entered in its favor in an amount exceeding \$1,750,000.00 plus interest and the costs and disbursements of this action; that process in due form of law according to the practice of this Court in causes of admiralty and maritime jurisdiction may issue against the captioned vessel her engines, etc., and that all persons having or claiming an interest therein be cited to appear and answer under oath all and singular the matters stated, and this Court pronounce judgment in favor of Plaintiff for its damages together with interest, costs and disbursements, and the captioned vessel be condemned and sold in

satisfaction, and that this Honorable Court grant Plaintiff such other and further relief which is just and proper.

Respectfully submitted,

W. SEAN O'NEIL, ATTORNEY AT LAW

/s/ W. Sean O'Neil

W. Sean O'Neil

TBA No. 24033807

1880 S. Dairy Ashford St., Suite 208

Houston, Texas 77077

(281) 496-0193 Telephone

(281) 496-0680 Telefax

***Attorney for Plaintiff ThyssenKrupp Materials NA,
Inc. d/b/a ThyssenKrupp Materials Trading North
America***

SCHEDULE A

LEGAL STATUS AND PLACE OF BUSINESS OF PARTIES

Plaintiff, **Thyssenkrupp Materials NA, Inc.**, was and now is a Delaware corporation with an office and place of business at 22355 West 11 Mile Road, Southfield, MI 48033.

M/V ELEEN NEPTUNE (IMO 9430844) was at all material times a general cargo ship sailing under the flag of Panama. She was built in 2009; her call sign is 3FYC6, and gross tonnage is 31,529 tons.

Defendant, **OCM ATLANTIC TRADER, LLC** (OCM) was and now is a foreign corporation, or similar entity, with power to sue and be sued, which regularly does business in Texas and the United States as a common carrier of goods, which does not maintain a designated agent in Louisiana upon whom service can be made, and thus may be served through F.R.C.P 4(k)(2), in care of the following:

Majuro MH
Marshall Islands 96960

DESCRIPTION OF SHIPMENT

Vessel:	M/V ELEEN NEPTUNE
Date of Shipment:	May/June 2019
Port of Shipment:	MUARA, BRUNEI
Port of Discharge:	HOUSTON, TEXAS
Description of Cargo:	ERW TUBING PER ATTACHED PACKING LISTS
Nature of Loss or Damage:	SEAWATER DAMAGE AND CONTAMINATION
AMOUNT:	\$1,750,000.00